



House Bill No. 5697

Public Act No. 11-98

AN ACT CONCERNING CHANGES TO THE MUNICIPAL ENERGY COOPERATIVE STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 7-233c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

(a) Any two or more municipal electric utilities may, by concurrent resolutions, duly adopted by the governing bodies of each of such municipal electric utilities, create and become members of a municipal electric energy cooperative under the name and style of "the municipal electric energy cooperative", with some identifying phrase inserted. The managing body of the municipal electric energy cooperative shall be a cooperative utility board which shall be charged with carrying out the corporate purposes and powers of the municipal electric energy cooperative. The number of representatives to be appointed at any time for full terms of office by the governing bodies of such municipal electric utilities shall be such uniform numbers as may be mutually agreed upon in said resolutions which number shall be not less than two nor more than six for each member. After the taking effect of the said resolutions of all such municipal electric utilities and after the filing of certified copies thereof pursuant to subsection (a) of section 7-233d, as amended by this act, the agreed

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number of representatives shall be appointed to the cooperative utility board by the governing body of each municipal electric utility. The qualification of such representatives, terms of office for the original representatives and their successors and compensation, if any, [of such representatives] by the member pursuant to this section or by the municipal cooperative pursuant to section 7-233p, as amended by this act, shall be prescribed by each such governing body; provided, each representative shall be an official or employee of such municipal electric utility. In addition to paying such compensation as may be prescribed pursuant to this section or section 7-233p, as amended by this act, a member may reimburse its representatives for expenses for travel, both within and without the state, incurred by them in connection with services as a designated representative on such board. Before such municipal cooperative can be validly and legally formed each of the municipalities represented by a municipal electric utility joining together to form the municipal cooperative must, by proper proceedings duly adopted, consent and agree to such formation of the municipal cooperative.

(b) After the creation of a municipal cooperative under subsection (a) of this section, any other municipal electric utility may become a member of the municipal cooperative if (1) the municipal electric utility files with the municipal cooperative (A) a resolution, duly adopted by its governing body, requesting membership in such cooperative, and (B) a certified copy of the proper proceedings, duly adopted by the municipality represented by the municipal electric utility, consenting and agreeing to such membership, and (2) after the municipal cooperative receives such filing, the governing [body of each municipal electric utility which is a member of the municipal cooperative] bodies of at least two-thirds of the municipal electric utilities comprising the membership of the municipal cooperative at the time of such filing duly [adopts] adopt a resolution approving membership of such municipal electric utility in the municipal

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cooperative. After the filing of certified copies of all such resolutions with the Secretary of the State pursuant to subsection (b) of section 7-233d, as amended by this act, the governing body of the municipal electric utility being added to the municipal cooperative shall appoint representatives to the cooperative utility board of the municipal cooperative. The number of such appointed representatives shall be the same as the number mutually agreed upon by the other members of the municipal cooperative pursuant to subsection (a) of this section. The provisions of said subsection (a) concerning the qualification, compensation and terms of office of, and reimbursement of travel expenses for, representatives of the existing members of the municipal cooperative shall apply to representatives of such municipal electric utility.

(c) A municipal electric utility [which] that is a member of a municipal cooperative may withdraw from the municipal cooperative if: (1) [Such municipal cooperative has no outstanding debt or obligations for which such municipal electric utility has entered into a contract with respect to or otherwise become legally obligated to provide payment for,] Such withdrawing municipal electric utility continues to fully perform all of its obligations under any contract it has with the municipal cooperative or provides sufficient funds in trust for the benefit of the municipal cooperative to satisfy such obligations, (2) the withdrawing municipal electric utility files with the municipal cooperative a resolution, duly adopted by its governing body, approving the withdrawal, and such resolution is filed with the Secretary of the State in the same manner as provided in subsection (c) of section 7-233d, as amended by this act, and (3) the municipality represented by the withdrawing municipal electric utility does not disapprove of such withdrawal, by vote of the municipality's legislative body, within thirty days after the adoption of such a resolution. [and (4) the governing body of each other municipal electric utility which is a continuing member of the municipal cooperative at

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the time of the filing of such resolution duly adopts a resolution approving such withdrawal.]

(d) Upon appointment of its representatives by the members of the municipal cooperative, the cooperative utility board shall organize, select its chairman and vice-chairman from among said board and proceed to consider those matters which have been recommended to it by the several members of the municipal cooperative. The cooperative utility board may hold such meetings and public hearings as it deems desirable and the powers of the municipal cooperative shall be vested in the representatives thereof in office from time to time. A majority of the entire authorized number of representatives of the municipal cooperative shall constitute a quorum at any meeting thereof. Action may be taken, motions voted and resolutions adopted by the municipal cooperative at any meeting of the cooperative utility board by vote of a majority of the representatives present, unless in any case the bylaws of a municipal cooperative or an amendment to such bylaws shall require a larger number for adoption or any representative of the cooperative utility board requests that the vote be based on megawatt-hour purchases. If such a request is made, (1) each representative shall have a number of votes equal to the total number of megawatt-hours purchased by the representative's member municipal electric utility from the municipal cooperative during the preceding completed calendar year, provided, if the municipal cooperative includes a new member municipal electric utility which purchased part or all of its power and energy from a supplier or suppliers other than the municipal cooperative during such year, each representative of such new member municipal electric utility shall have a number of votes equal to the total megawatt-hours purchased by such new member from such other suppliers during such year plus the total number of megawatt-hours purchased from the municipal cooperative during such year, and (2) any action, motion or resolution taken, voted or adopted by the municipal cooperative at such meeting

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shall be by a favorable vote of sixty-seven per cent or more of the total of such votes of the representatives who are present at the meeting and who vote, provided at least a majority of the members of the municipal cooperative approves such action, motion or resolution. Notwithstanding any provision of this subsection or of subsection (g) of this section to the contrary, a unanimous vote of all of the representatives of the municipal cooperative shall be required before said municipal cooperative can exercise the power of condemnation or eminent domain provided in this chapter. The cooperative utility board may appoint and employ a chief executive officer, a treasurer, a secretary, [an executive director, a chief engineer and] a general counsel and such [other special counsel, consulting engineer, accountants, legal, financial and construction experts, and] officers, advisors, consultants and other agents and employees as it may deem necessary, and the cooperative utility board shall determine their qualifications, terms of office, duties and compensation.

(e) Organizational expenses incurred by a municipal cooperative shall be paid ratably by each member in the same proportion as the population or area of operation serviced by each such member bears to the total population or area of operation serviced by all members or by such other method as determined to be fair and equitable by the cooperative utility board. Such payments shall be made by each member whether or not that member utilizes the electric power or energy made available or furnished to such member.

(f) Each representative of a municipal electric energy cooperative shall hold office for the term for which he was appointed and until his successor has been appointed and has qualified. A representative of a municipal electric energy cooperative may be removed only by the cooperative utility board for inefficiency or neglect of duty or misconduct in office and after he shall have been given a copy of the charges against him and, not sooner than ten days thereafter, had

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opportunity in person or by counsel to be heard thereon by such governing body. A member may remove one or more of its representatives with or without cause at any time.

(g) A municipal cooperative may adopt, on a prospective basis, methods of voting for all or specifically designated matters. Any such methods shall be specified in the bylaws of a municipal cooperative or in an amendment to such bylaws unanimously adopted by the members of the municipal cooperative. A municipal cooperative may distinguish the voting rights of its members based on whether a member is a full requirements customer or a partial requirements customer of the municipal cooperative or based on the term of the contractual obligations for power and transmission supply each member incurs with respect to the municipal cooperative, provided any such distinctions shall treat similarly situated members in a comparable and nondiscriminatory manner. For purposes of this subsection, "full requirements customer" means a wholesale purchaser of electric power or transmission services whose electric energy supplier is the sole source of long-term firm power, and "partial requirements customer" means a wholesale purchaser of electric power or transmission services that directly owns or operates generating or transmission assets that are insufficient to carry all of such purchaser's electric load and whose electric energy supplier is a supplemental source of long-term firm power.

Sec. 2. Section 7-233d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

(a) A certified copy of each concurrent resolution creating a municipal electric energy cooperative, which is adopted pursuant to subsection (a) of section 7-233c, as amended by this act, and a certified copy of each of the proceedings of the municipalities consenting and agreeing to the formation of the municipal electric energy cooperative as required by said subsection (a), shall be filed in the office of the

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Secretary of the State. Upon proof of such filing of a certified copy of the concurrent resolutions creating the municipal electric energy cooperative and the municipal proceedings as aforesaid, the municipal electric energy cooperative therein referred to shall, in any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract or obligation or act of the municipal electric energy cooperative, be conclusively deemed to have been lawfully and properly created, organized and established and authorized to transact business and exercise its powers under this chapter.

(b) A certified copy of each resolution approving the addition of a municipal electric utility to an existing municipal cooperative, which is adopted pursuant to subsection (b) of section 7-233c, as amended by this act, and a certified copy of the proceedings of the municipality represented by such municipal electric utility consenting and agreeing to membership in such municipal cooperative as required by said subsection (b), shall be filed in the office of the Secretary of the State. Upon proof of such filing of a certified copy of such resolutions and such municipal proceedings, such municipal electric utility shall be deemed to be a member of such municipal cooperative.

(c) A certified copy of [each] the resolution approving the withdrawal of a municipal electric utility from an existing municipal cooperative, which is adopted pursuant to subsection (c) of section 7-233c, as amended by this act, and an affidavit by the withdrawing municipal electric utility stating that the legislative body of the municipality has not disapproved of such withdrawal in the manner provided under said subsection (c), shall be filed in the office of the Secretary of the State. Upon proof of such filing of a certified copy of such [resolutions] resolution and such affidavit, such municipal electric utility shall conclusively be deemed to have lawfully and properly withdrawn from the municipal cooperative. [and the municipal electric utility shall be deemed never to have been a member

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of the municipal cooperative and shall no longer have any right, title or interest in the property of the municipal cooperative.] The withdrawing municipal electric utility shall have rights to retained earnings and assets of the municipal cooperative as set forth in the contract or contracts for power supply between the withdrawing municipal electric utility and the municipal cooperative or in any other contract between such municipal electric utility and such municipal cooperative, provided any such contract shall treat similarly situated members in a comparable and nondiscriminatory manner and provided further the withdrawing municipal electric utility complies with the provisions of subsection (c) of section 7-233c, as amended by this act, for withdrawal from the municipal cooperative.

(d) A copy of any such resolutions or proceedings filed under this section, duly certified by or on behalf of the Secretary of the State, shall be admissible in evidence in any suit, action or proceeding and shall be conclusive evidence of the due and proper filing thereof as aforesaid.

Sec. 3. Section 7-233e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

(a) As used in this section, "person without the state" means a person located outside the state that complies with the standards for interconnection to the transmission or distribution facilities of the public utility to which such person is interconnected.

(b) A municipal electric energy cooperative created in the manner provided in this chapter shall constitute a public body corporate and politic, and in furtherance of its purpose of providing facilities for the generation and transmission of electric power such municipal electric energy cooperative shall be deemed to be exercising an essential governmental function and shall have the following powers, to wit:

(1) To adopt and have a common seal and to alter the same;

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(2) To sue and be sued;

(3) To contract and be contracted with;

(4) To plan, acquire, construct, reconstruct, operate, maintain, repair, extend or improve one or more projects within or without the state; or to acquire any interest in or any right to capacity of such a project and to act as agent, or designate one or more of the other participants in such project to act as agent, for all the participants in such project in connection with the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension or improvement of such project;

(5) To investigate the desirability of and necessity for additional sources and supplies of electric power, and to make such studies, surveys and estimates as may be necessary to determine the feasibility and cost of any such additional sources and supplies of electric power;

(6) To cooperate with private electric utilities, member and nonmember municipal electric utilities and other public or private electric power entities, within and without the state, or with any person without the state, in the development of such sources and supplies of electric power;

(7) To procure from the United States of America or any agency or instrumentality thereof, or from any state or agency or instrumentality thereof, any consents, authorizations or approvals [which] that may be requisite to enable any project within its powers to be carried forward;

(8) To do and perform any acts and things authorized by the act under, through or by means of its cooperative utility board, officers, agents or employees;

(9) To acquire, hold, use and dispose of its income, revenues, funds and moneys;

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(10) To acquire, own, hire, use, operate and dispose of personal property;

(11) To acquire, own, use, lease, operate and dispose of real property and interests in real property, and to make improvements thereon;

(12) To grant the use, by lease or otherwise, and to make charges for the use, of any property or facility owned or controlled by it;

(13) To borrow money and to issue its negotiable bonds or notes, and to enter into any agreements with the purchasers or holders of such bonds or notes or with others for their benefit;

(14) Subject to any agreement with bondholders or noteholders, to invest moneys of the municipal cooperative not required for immediate use, including proceeds from the sale of any bonds or notes, in such obligations, securities and other investments as the cooperative utility board shall deem prudent and in accordance with the laws of the state regarding the investment of public moneys;

(15) To exercise the right of eminent domain, subject to the limitations contained herein;

(16) To fix and determine the location and character of, and all other matters in connection with, any and all projects it may be authorized to acquire, hold, establish, effectuate, operate or control;

(17) To contract with any electric utility, any member or nonmember municipal electric utility, any public or private electric power entity within or without the state, or any person without the state, for the sale, exchange or transmission of electric power or energy generated by any project, or any interest therein or any right to capacity thereof, on such terms and for such period of time as the cooperative utility board shall determine;

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(18) To purchase, sell, exchange or transmit electric power and energy within and without the state, to any electric utility, any member or nonmember municipal electric utility or any other public or private electric power entity, or any person without the state; and to enter into agreements with respect to such purchase, sale, exchange, or transmission to any electric utility, any member or nonmember municipal electric utility or any other public or private electric power entity; as one means of implementing the power granted by this subdivision, a municipal electric energy cooperative, if its cooperative utility board shall so determine, may enter into or become a participant in the New England Power Pool or become a market participant pursuant to rules and procedures of the regional independent system operator, as defined in section 16-1; and to acquire, own, hold and dispose of stock or other ownership interests in, or evidences of indebtedness of, any corporation or business entity [which] that constructs electric power generation or transmission facilities or generates, produces, transmits, purchases, sells or exchanges electric power and energy to, or insures the liabilities of, public or private electric power entities located within or without the state, provided the outstanding stock of such corporation is owned in whole or in part by such public or private electric power entities;

(19) To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the cooperative utility board deems desirable;

(20) To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from any other source, and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(21) To mortgage, or otherwise hypothecate, any or all of its property or assets to secure the payment of its bonds, notes or other

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obligations;

(22) To submit to arbitration any disputes with others or among its members;

(23) To produce electric power by the use of cogeneration technology or renewable fuel resources, as defined in section 16-1;

(24) To contract for the purchase or exchange of electricity produced by a person using cogeneration technology or renewable fuel resources, as defined in section 16-1, or for the sale or exchange of electricity produced by the municipal cooperative to such person, provided such purchase, sale or exchange is subject to the rates and conditions of service established in accordance with section 16-243a;

(25) To provide in any agreement executed in connection with a project by or among a municipal cooperative and other participants in such project that, if one or more of such participants defaults in its obligations under such agreement including, without limitation, the payment of principal or interest on their indebtedness issued with respect to such project, the municipal cooperative and the other nondefaulting participants, if any, shall be required to pay such obligations, including the principal of and the interest on such indebtedness, for which the defaulting participant or participants were to have paid, upon such terms and conditions and with such limitations as the cooperative utility board may determine;

(26) To guarantee, in connection with any project, the punctual payment of the principal of and interest on the indebtedness or other contractual obligations of any of the participants in such project;

(27) (A) To enter into agreements with any entity to receive or procure the supply, or the prepayment of the supply, of natural gas for the sole benefit of its member, the City of Norwich Department of Public Utilities, a municipal gas utility, provided (i) such supply, or

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prepayment of supply, is consumed or used by said utility or by any retail customer of said utility entirely within the geographic boundaries of the city of Norwich or the town of Preston, and (ii) no part of such supply, or prepayment of supply, shall be consumed or used within or transported to any other municipality or utility, territory, land held in trust by the United States on behalf of a Native American tribe or land located within a Native American reservation or other jurisdiction;

(B) No power granted to a municipal cooperative pursuant to this subdivision shall be exercised so as to impair any existing right, power or privilege of any gas company, as defined in section 16-1;

(28) To exercise and perform all or part of its power and functions for the sole purpose of purchasing, selling, exchanging or transmitting electric power and energy on a wholesale basis, as provided in this chapter, through one or more wholly owned or partly owned corporations or other business entities; and

(29) To exercise all other powers not inconsistent with the state Constitution or the United States Constitution, which may be reasonably necessary or appropriate for or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers [which] that might be exercised by a natural person or a private corporation in connection with similar property and affairs.

Sec. 4. Section 7-233n of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

The governing bodies of two or more municipal electric utilities which have created a municipal electric energy cooperative pursuant

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to section 7-233c, as amended by this act, may, by concurrent resolutions duly adopted by each of such governing bodies within any single calendar year, dissolve such municipal electric energy cooperative on the conditions set forth in this section. Such municipal electric energy cooperative may be dissolved on condition that either the representatives of the municipal electric energy cooperative by resolution duly adopted [] consent to such dissolution [] and the municipal electric energy cooperative has no debts or obligations outstanding or that sufficient moneys have been set aside irrevocably in trust to satisfy all of the outstanding debts or obligations of such municipal electric energy cooperative. [Upon the dissolution of any municipal electric energy cooperative in the manner provided in this section, the governing bodies dissolving such municipal electric energy cooperative shall be deemed never to have joined in the creation of a municipal electric energy cooperative.] A copy of each concurrent resolution for the dissolution of a municipal electric energy cooperative adopted pursuant to this section, duly certified by the appropriate officer of the municipal electric utility, shall be filed in the office of the Secretary of the State. Upon proof of such filing of certified copies of the concurrent resolutions for the dissolution of a municipal electric energy cooperative as aforesaid and upon proof either that such municipal electric energy cooperative had no debts or obligations outstanding at the time of the adoption of such resolutions, or that sufficient moneys have been set aside irrevocably in trust to satisfy all of its outstanding debts or obligations, the municipal electric energy cooperative therein referred to shall be conclusively deemed to have been lawfully and properly dissolved and the property of the municipal electric energy cooperative shall be vested in the creating municipal electric utilities or as otherwise provided in agreements between the municipal electric energy cooperative and the members of the municipal electric energy cooperative, provided any such agreements shall treat similarly situated members in a comparable and nondiscriminatory manner. A copy of any such concurrent resolution,

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duly certified by or on behalf of the Secretary of the State, shall be admissible in evidence in any suit, action, or proceeding, and shall be conclusive evidence of due and proper filing thereof as aforesaid.

Sec. 5. Section 7-233o of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

No representative, officer or employee of a municipal electric energy cooperative shall have or acquire any personal interest, direct or indirect, in any project or in any property included or planned to be included in any project or in any contract or proposed contract for materials or services to be furnished to or used by the municipal electric energy cooperative, but neither the holding of any office or employment in the government of any municipal electric utility or in any municipal electric energy cooperative under any law of the state nor the owning of any property within the state shall be deemed a disqualification for representation on or employment by a municipal electric energy cooperative.

Sec. 6. Section 7-233p of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

[A] If the members of a municipal electric energy cooperative are not paying compensation to their representatives pursuant to subsection (a) of section 7-233c, as amended by this act, such municipal electric energy cooperative may reimburse its representatives for necessary expenses incurred in the discharge of their duties and pay such reasonable, uniformly applicable compensation to such representatives for their service on the board of such municipal electric energy cooperative as provided in this section. The concurrent resolutions creating a municipal electric energy cooperative may provide that the representatives of the municipal electric energy cooperative may receive annual compensation for their services within limitations to be stated in such concurrent resolutions and in that

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event, each representative may receive from the municipal electric energy cooperative such compensation for his services as the municipal electric energy cooperative may determine within the limitations stated in such concurrent resolutions. Said provisions or limitations stated in any such resolutions may be amended by subsequent concurrent resolutions, but no reduction of any such limitation shall be effective as to any representative of the municipal electric energy cooperative then in office except upon the written consent of such representative. [No representative of any municipal authority shall receive any compensation for his services except as provided in this section.]

Approved July 8, 2011